

2006

Thomas Edison Charter School, Petitioner v. Utah State Retirement Board, Respondent : Reply Brief

Utah Court of Appeals

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IN THE
UTAH COURT OF APPEALS

THOMAS EDISON CHARTER SCHOOL,

Petitioner/Petitioner,

v.

Appellate Case No. 20061159

UTAH STATE RETIREMENT BOARD,

Respondent/Respondent.

REPLY BRIEF OF PETITIONER

Petition For Review of Final Order
Utah State Retirement Board, Agency Action No. 04-18R
Final Order Dated December 14, 2006

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Petitioner Requests Oral Argument

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ARGUMENT

I. The parties agree that the appropriate standard of review is a correction-of-error standard, with no deference to USRB's decision below.

Whether USRB acted beyond its “jurisdiction conferred by statute”¹ is not important if this Court agrees that USRB “erroneously interpreted or applied the law”² when it determined that the general provisions of the Utah State Retirement and Benefits Act trumped the more specific provisions of the Utah Charter Schools Act.

The parties agree that, because USRB has construed statutes outside of its own “governing statutes” and made its own interpretations of general law, this Court must apply a correction of error standard that gives no deference to the USRB's decision.³ In addition, it should be noted that USRB does not even have legislative authority to interpret all statutes in Title 49, the Utah State Retirement and Insurance Benefits Act. In a case involving USRB's interpretation of Utah Code Ann. § 49-5-704, this Court held:⁴

We review the agency's statutory construction as a question of law under a correction-of-error standard unless the statute expressly or impliedly grants the agency discretion to interpret the statutory language. In this case, the statute does not grant the Retirement Board such discretion, and therefore we review the Board's decision for correctness.

¹ Utah Code Ann. § 63-46b-16(4).

² *Id.*

³ USRB Brief, pp. 16, 17.

⁴ *Epperson v. Utah State Retirement Board*, 949 P.2d 779, 781 (UT App. 1997).

It is crucial that this Court make its own interpretation of the statutory conflict at issue without any deference to the USRB's decision below. TECS strongly agrees with the Supreme Court that appellate courts, rather than state agencies, “are in a better position to review questions of constitutional and statutory interpretation.”⁵

II. An irreconcilable statutory conflict existed.

USRB has correctly set forth the statutes in Title 49 that, if one looks no further than the boundaries of that title, appear to have required TECS to join the URS in 2003. But a review of the Utah Charter Schools Act⁶ as it existed in 2003 reveals an irreconcilable statutory conflict with the relevant provisions of Title 49.

Since 1998, section 512(2) of the Utah Charter School Act has provided that a charter “school's governing body shall determine the level of compensation and all terms and conditions of employment, except as otherwise provided in this part.”⁷ Section 512(2) does not say that the governing body must determine the level of compensation and some terms and conditions of employment. Nor does Section 512(2) say that the governing body must determine the level of compensation and all terms and conditions of employment, except as otherwise provided in Title 49. No, when referring to the governing board's authority, Section 512(2) uses the verb “shall” and the adjective “all”

⁵ *Utah Chapter of Sierra Club v. Utah Air Quality Board*, 2006 UT 74, ¶ 13, 148 P.3d 960, 966.

⁶ Part 5 of Title 53A, Chapter 1a, Utah Code.

⁷ Utah Code Ann. § 53A-1a-512(2) (*emphasis added*).

when referring to a governing board's responsibility for setting the terms and conditions of employment for charter school employees. It is difficult – if not impossible – to find two more definitive words the Legislature could have chosen to describe this responsibility.

In addition, the Legislature included a clear statement in Section 512(2) that the only exceptions to the governing body's authority to set “all terms and conditions of employment” must be found “in this part,” meaning Part 5 of Title 53A, Chapter 1a, Utah Code Ann, otherwise known as the Utah Charter Schools Act. The provisions of Title 49 are not mentioned in the 2003 version of Section 512(2) as an exception to the governing board's authority.⁸

This Court must assume that the legislature truly meant “shall”⁹ and “all” when it enacted Section 512(2), specifically setting forth a governing body's responsibility for

⁸ Interestingly, the 2004 amendments to Section 512 in H.B. 108 specifically reference Title 49. Utah Code Ann. § 53A-1a-512 was amended by H.B. 108 in pertinent part to include the following:

(6) Except as provided under Subsection (7), an employee of a charter school shall be a member of a retirement system under Title 49, Utah State Retirement and Insurance Act.

(7)(a) At the time of application for a charter school, whether sponsored by the state or a school district, a proposed charter school may make an election of nonparticipation as an employer for retirement programs under Title 49, Chapter 12, Public Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act.

⁹ *Denier v. Denier*, 2004 UT App 314, ¶ 12, 98 P.3d 1178, 1182 (“Ordinarily, the use of the word 'shall' in a statute creates a mandatory condition, eliminating any discretion on the part of the courts.”)

establishing terms and conditions of employment of charter school employees. As stated by the Supreme Court:¹⁰

When construing a statute, we must give effect to legislative intent. To that end, we presume that the Legislature used each term advisedly, and we give effect to each term according to its ordinary and accepted meaning. (*Citation omitted.*)

To say, as USRB does on page 24 of its brief, that “most, if not all, public employers maintain the statutory discretion to determine the conditions of employment for their employees” is misleading. Of course, state and local agencies have authority to set some “terms and conditions of employment.” But none – except charter schools – have the authority to set “all terms and conditions of employment.”

Indeed, the examples cited by USRB on pages 24 and 25 of its brief would be better proffered as examples of significant legislative restrictions on state and local government employment practices. For example, the County Personnel Management Act¹¹ devotes an entire chapter of the Utah Code to instructing counties how they must go about hiring and firing their career service employees.¹² Likewise, school districts are

¹⁰ *Verslius v. Guaranty National Companies*, 842 P.2d 865, 867 (UT 1992); see also *LaBelle v. McKay Dee Hospital Center*, 2004 UT 15, ¶ 16, 89 P.3d 113, 116 (“Statutory enactments are to be construed as to render all parts thereof relevant and meaningful. Likewise, we are compelled to give the statutory language meaning and to assume that each term in the statute was used advisedly ... unless such a reading is unreasonably confused or inoperable.”), quoting *Platts v. Parents Helping Parents*, 947 P.2d 658, 662 (Utah 1997).

¹¹ Title 17, Chapter 33, Utah Code.

¹² It is a misdemeanor to willfully violate Chapter 33. Utah Code Ann. § 17-33-14.

given explicit directions on how to hire, fire, compensate, and evaluate their employees by in multiple parts of the Utah Code, such as the Educator Licensing and Professional Practices Act,¹³ the Utah Orderly School Termination Procedures Act,¹⁴ and the Educator Evaluation provisions in Title 53A, Chapter 10, Utah Code. State agencies, too, are given clear legislative directions in the Utah State Personnel Management Act¹⁵ about hiring, firing, and compensating employees. And if the agencies don't comply, the grievance and appeal procedures set forth in Title 67, Chapter 19a, give state employees a mechanism to force compliance.¹⁶ Finally, after being told in Utah Code Ann. § 10-3-815 that they must adopt rules and regulations consistent with state law, municipalities are instructed in Part 10 of Title 10, Chapter 3, Utah Code, how to establish civil service commissions before they are instructed in Utah Code Ann. § 10-3-1105 that most municipal employees “shall hold employment without limitation of time” and are subject to the discharge and disciplinary procedures set forth in Utah Code Ann. § 10-3-1106. Taken together or separately, that is a lot of legislative direction for public employers.

None of the examples cited by USRB in its brief come close to the Legislature's unequivocal statement in Section 512(2) that a charter “school's governing body shall

¹³ Title 53A, Chapter 6, Utah Code.

¹⁴ Title 53A, Chapter 8, Utah Code.

¹⁵ Title 67, Chapter 19.

¹⁶ Just in case the misdemeanor provisions in Utah Code Ann. § 67-19-29 are not enough to ensure compliance with the myriad state laws regulating public employment.

determine the level of compensation and all terms and conditions of employment, except as otherwise provided in this part.”¹⁷

III. In terms of substantive statutory language, Section 512(2) of the Utah Charter Schools Act was enacted later than Utah Code Ann. §§ 49-13-201 and 49-13-202 and was more specific in its application than Utah Code Ann. §§ 49-13-201 and 49-13-202.

USRB correctly points out¹⁸ that when the Legislature enacted H.B. 250¹⁹ in the 2002 general session, it amended the statutory text of the section renumbered as Utah Code Ann. § 49-13-201. (In H.B. 250, the Legislature also made similar drafting amendments to the statutory text of the section renumbered as Utah Code Ann. § 49-13-202.) USRB is incorrect, however, when it suggests that the changes to Utah Code Ann. §§ 49-13-201 and 49-13-202 “were the latest expression of legislative intent regarding participation of public employers with URS.”²⁰

The Legislature itself viewed its 2002 revisions to Utah Code Ann. §§ 49-13-201 and 49-13-202 as drafting revisions that were part of the renumbering of many parts of Title 49 and other statutes related to public-employee retirement law. Addendum E to this Reply Brief includes the first 14 pages of H.B. 250 and the four pages of the bill that

¹⁷ Utah Code Ann. § 53A-1a-512(2) (*emphasis added*).

¹⁸ USRB Brief, p. 27; Addendum B.

¹⁹ A correction is in order. In footnotes 9, 10 and 80 of TECS's *Brief of Petitioner*, 2002 Utah Laws, Chapter 250 was referenced as H.B. 50. The cite to the House Bill should have been to H.B. 250. Undersigned counsel apologizes for the error.

²⁰ USRB Brief, p. 27.

include the amendments to the two sections at issue. The first sentence of H.B. 250 states: “This act recodifies the Retirement Code.”²¹ The bill then goes on to distinguish between amendments to sections outside of Title 49, enactments of new sections in Title 49, renumbering of and amendments to existing sections in Title 49, and repeals of sections in Title 49.

The 2002 amendments to statutes now known as Utah Code Ann. §§ 49-13-201 and 49-13-202 were drafting revisions that did not affect the substance of the predecessor statutes, Utah Code Ann. §§ 49-13-203 and 49-13-204 (2001).²² Indeed, the recodification brought about by H.B. 250 in 2002 included bill-drafting revisions of every statutory section addressed by the bill except those sections that were newly enacted or repealed. Accordingly, the original legislative intent expressed in the sections now known as Utah Code Ann. §§ 49-13-201 and 49-13-202 dates back at least to 1991, when the Legislature enacted H.B. 154.²³

USRB is also wrong when it asserts that the general provisions of Utah Code Ann. §§ 49-13-201 and 49-13-202 are more specific than the provisions of Section 512(2) of the Utah Charter Schools Act. Utah Code Ann. § 49-13-201 (2002) mandates participation in the URS by the “state and its educational institutions”²⁴ if any retirement

²¹ Addendum B, p. 1.

²² Addendum B, pp. 112-115.

²³ 1991 Utah Laws, Ch. 217, §2.

²⁴ Utah Code Ann. §§ 49-13-201(1) (2003).

benefits are offered. Casting a broad net, that section applies to myriad state and local agencies and their employees. On the other hand, Section 512(2) is a laser beam that focuses on only one issue: the sole authority and responsibility of a charter school governing body to set compensation and all other terms and conditions of employment for its employees.

IV. This Court's resolution of the irreconcilable statutory conflict addressed above should determine it's resolution of whether the 2004 legislation was a clarification of existing law or a substantive change in the law.

This Court's decision as to whether the 2004 amendments to Section 512 were clarifications of existing law or substantive changes that should not be applied retroactively is a straightforward decision. If this Court believes that the Legislature meant what it said when it enacted the Utah Charter Schools Act in 1998 – that is, governing bodies alone have the authority and responsibility to determine compensation and all terms and conditions of employment for charter school employees – then the 2004 amendments merely clarified existing law and created a procedural mechanism for an existing charter school or a later-established charter school to opt out of the URS. These amendments leave intact the governing body's authority and responsibility vis-a-vis charter school employees.

If this Court believes that the mandatory participation provisions in Title 49 trumped Section 512(2) when TECS joined the URS in 2003, then the 2004 amendments are substantive changes that did not take effect until 2004. It is that simple.

V. A decision in favor of TECS will not result in the demise of the URS.

In several places in its brief, USRB raises the specter of other public employers seeking to withdraw from the URS or failing to pay premiums if TECS prevails, thus putting the URS in financial jeopardy.²⁵ This is unnecessary. Charter schools are unique; no other public employer in Utah has as much authority to set terms and conditions of employment as charter schools. TECS never wanted to participate in the URS in the first place and only joined because it was told it had no choice by its charter sponsor and the URS staff.²⁶

In addition, it is not lost on TECS that the decision makers in this litigation are either receiving benefits from URS or will likely be receiving benefits from URS in the future. Nevertheless, TECS believes it will receive a fair hearing on the legal merits of its case from this Court. TECS would simply prefer that USRB not suggest that the outcome of this relatively minor litigation could somehow affect “the actuarial soundness of the URS.” Such hyperbole is not useful.

²⁵ USRB Brief, p. 25: “However, if TECS somehow is allowed to withdraw from URS, nothing would prevent any other public employer from making the same argument TECS has made under their similar statutes which could impact the actuarial soundness of URS.” (*Emphasis added.*)

USRB Brief, p. 35: “Without the requirement that delinquent public employers be required to pay retirement contributions, any public employer could simply decide not to pay benefits for their employees without penalty. Such a scenario would violate both fiduciary law and public policy.”

²⁶ RA 65; TR 26,44.

CONCLUSION

TECS respectfully requests that this Honorable Court make its own conclusions of law, reverse the final order of the USBR and remand to the USBR with directions to either rescind the contract with TECS or allow TECS the option to void the contract.

Dated this 4th day of June, 2007.

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Respondent/Respondent.

ADDENDUM TO REPLY BRIEF OF PETITIONER

Petition For Review of Final Order
Utah State Retirement Board, Agency Action No. 04-18R
Final Order Dated December 14, 2006

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RETIREMENT LAW RECODIFICATION

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Ron Bigelow

This act recodifies the Retirement Code. This act has an effective date. This act provides a coordination clause

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

31A-22-703, as last amended by Chapter 116, Laws of Utah 2001
35A-4-502, as last amended by Chapter 116, Laws of Utah 1998
51-7-4, as last amended by Chapter 222, Laws of Utah 2000
53-6-107, as last amended by Chapter 79, Laws of Utah 1996
53-7-105, as last amended by Chapter 282, Laws of Utah 1998
53-13-108, as renumbered and amended by Chapter 282, Laws of Utah 1998
53A-17a-125, as last amended by Chapter 335, Laws of Utah 2001
63-95-102, as last amended by Chapters 210 and 222, Laws of Utah 2000
63-95-202, as enacted by Chapter 210, Laws of Utah 2000
63E-1-102 (Effective 07/01/02), as enacted by Chapter 201, Laws of Utah 2001
63E-1-202 (Effective 07/01/02), as enacted by Chapter 201, Laws of Utah 2001
67-8-3, as last amended by Chapter 299, Laws of Utah 1995
67-20-7, as last amended by Chapter 240, Laws of Utah 1996
67-22-1, as last amended by Chapters 116 and 264, Laws of Utah 2001
67-22-2, as last amended by Chapters 116 and 264, Laws of Utah 2001
78-7-35, as renumbered and amended by Chapter 46, Laws of Utah 2001

ENACTS:

49-11-603, Utah Code Annotated 1953
49-11-604, Utah Code Annotated 1953
49-11-605, Utah Code Annotated 1953
49-11-606, Utah Code Annotated 1953

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49-11-620, Utah Code Annotated 1953
49-11-802, Utah Code Annotated 1953
49-12-302, Utah Code Annotated 1953
49-13-302, Utah Code Annotated 1953
49-14-505, Utah Code Annotated 1953
49-15-505, Utah Code Annotated 1953
49-16-203, Utah Code Annotated 1953
49-16-505, Utah Code Annotated 1953
49-16-506, Utah Code Annotated 1953
49-17-403, Utah Code Annotated 1953
49-19-102, Utah Code Annotated 1953
49-19-402, Utah Code Annotated 1953
49-19-403, Utah Code Annotated 1953
49-19-404, Utah Code Annotated 1953
49-20-403, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

49-11-101, (Renumbered from 49-1-101, as last amended by Chapter 231, Laws of Utah 1996)
49-11-102, (Renumbered from 49-1-103, as last amended by Chapter 73, Laws of Utah 2001)
49-11-103, (Renumbered from 49-1-102, as last amended by Chapter 231, Laws of Utah 1996)
49-11-201, (Renumbered from 49-1-201, as last amended by Chapter 210, Laws of Utah 2000)
49-11-202, (Renumbered from 49-1-202, as last amended by Chapter 243, Laws of Utah 1996)
49-11-203, (Renumbered from 49-1-203, as last amended by Chapter 31, Laws of Utah 1997)

49-11-204, (Renumbered from 49-1-204, as last amended by Chapter 231, Laws of Utah
1996)

49-11-301, (Renumbered from 49-1-301, as last amended by Chapter 283, Laws of Utah
2000)

49-11-302, (Renumbered from 49-1-302, as last amended by Chapter 79, Laws of Utah
1996)

49-11-303, (Renumbered from 49-1-303, as enacted by Chapter 1, Laws of Utah 1987)

49-11-304, (Renumbered from 49-1-304, as last amended by Chapter 231, Laws of Utah
1996)

49-11-305, (Renumbered from 49-1-305, as enacted by Chapter 1, Laws of Utah 1987)

49-11-401, (Renumbered from 49-1-401, as last amended by Chapter 31, Laws of Utah
1997)

49-11-402, (Renumbered from 49-1-402, as last amended by Chapter 197, Laws of Utah
1995)

49-11-403, (Renumbered from 49-1-407, as last amended by Chapter 141, Laws of Utah
2001)

49-11-404, (Renumbered from 49-1-404, as last amended by Chapter 231, Laws of Utah
1996)

49-11-405, (Renumbered from 49-1-406, as last amended by Chapter 31, Laws of Utah
1997)

49-11-501, (Renumbered from 49-1-502, as last amended by Chapter 141, Laws of Utah
2001)

49-11-502, (Renumbered from 49-1-503, as last amended by Chapter 292, Laws of Utah
1999)

49-11-503, (Renumbered from 49-1-504, as last amended by Chapter 292, Laws of Utah
1999)

49-11-504, (Renumbered from 49-1-505, as last amended by Chapter 141, Laws of Utah
2001)

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- 49-11-601, (Renumbered from 49-1-601, as last amended by Chapter 141, Laws of Utah 2001)
- 49-11-602, (Renumbered from 49-1-602, as last amended by Chapter 157, Laws of Utah 1992)
- 49-11-607, (Renumbered from 49-1-603, as last amended by Chapter 81, Laws of Utah 1989)
- 49-11-608, (Renumbered from 49-1-604, as last amended by Chapter 81, Laws of Utah 1989)
- 49-11-609, (Renumbered from 49-1-606, as last amended by Chapter 141, Laws of Utah 2001)
- 49-11-610, (Renumbered from 49-1-607, as last amended by Chapter 31, Laws of Utah 1997)
- 49-11-611, (Renumbered from 49-1-608, as last amended by Chapters 2 and 7, Laws of Utah 1989, Second Special Session)
- 49-11-612, (Renumbered from 49-1-609, as last amended by Chapter 141, Laws of Utah 2001)
- 49-11-613, (Renumbered from 49-1-610, as last amended by Chapter 141, Laws of Utah 2001)
- 49-11-614, (Renumbered from 49-1-613, as enacted by Chapter 273, Laws of Utah 1990)
- 49-11-615, (Renumbered from 49-1-614, as enacted by Chapter 273, Laws of Utah 1990)
- 49-11-616, (Renumbered from 49-1-615, as enacted by Chapter 229, Laws of Utah 1991)
- 49-11-617, (Renumbered from 49-1-616, as enacted by Chapter 226, Laws of Utah 1993)
- 49-11-618, (Renumbered from 49-1-403, as enacted by Chapter 1, Laws of Utah 1987)
- 49-11-619, (Renumbered from 49-1-405, as enacted by Chapter 285, Laws of Utah 1990)
- 49-11-701, (Renumbered from 49-1-701, as last amended by Chapter 90, Laws of Utah 1994)
- 49-11-801, (Renumbered from 49-1-611, as last amended by Chapter 267, Laws of Utah 1998)

49-12-101, (Renumbered from 49-2-101, as enacted by Chapter 1, Laws of Utah 1987)
49-12-102, (Renumbered from 49-2-103, as last amended by Chapter 141, Laws of Utah 2001)
49-12-103, (Renumbered from 49-2-201, as enacted by Chapter 1, Laws of Utah 1987)
49-12-104, (Renumbered from 49-2-202, as enacted by Chapter 1, Laws of Utah 1987)
49-12-201, (Renumbered from 49-2-203, as enacted by Chapter 1, Laws of Utah 1987)
49-12-202, (Renumbered from 49-2-204, as last amended by Chapter 220, Laws of Utah 2000)
49-12-203, (Renumbered from 49-2-205, as last amended by Chapter 31, Laws of Utah 1997)
49-12-204, (Renumbered from 49-2-206, as enacted by Chapter 1, Laws of Utah 1987)
49-12-301, (Renumbered from 49-2-301, as last amended by Chapter 157, Laws of Utah 1992)
49-12-401, (Renumbered from 49-2-401, as last amended by Chapter 292, Laws of Utah 1999)
49-12-402, (Renumbered from 49-2-402, as last amended by Chapter 10, Laws of Utah 1997)
49-12-403, (Renumbered from 49-2-404, as enacted by Chapter 1, Laws of Utah 1987)
49-12-404, (Renumbered from 49-2-405, as last amended by Chapter 197, Laws of Utah 1995)
49-12-405, (Renumbered from 49-2-406, as last amended by Chapter 267, Laws of Utah 1998)
49-12-406, (Renumbered from 49-2-409, as enacted by Chapter 1, Laws of Utah 1987)
49-12-407, (Renumbered from 49-2-601, as last amended by Chapter 157, Laws of Utah 1992)
49-12-408, (Renumbered from 49-2-602, as last amended by Chapter 353, Laws of Utah 2000)
49-12-501, (Renumbered from 49-2-701, as last amended by Chapter 90, Laws of Utah

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1994)

49-12-601, (Renumbered from 49-2-503, as enacted by Chapter 1, Laws of Utah 1987)

49-12-701, (Renumbered from 49-2-802, as last amended by Chapter 226, Laws of Utah

1993)

49-13-101, (Renumbered from 49-3-101, as enacted by Chapter 1, Laws of Utah 1987)

49-13-102, (Renumbered from 49-3-103, as last amended by Chapter 141, Laws of Utah

2001)

49-13-103, (Renumbered from 49-3-201, as enacted by Chapter 1, Laws of Utah 1987)

49-13-104, (Renumbered from 49-3-202, as enacted by Chapter 1, Laws of Utah 1987)

49-13-201, (Renumbered from 49-3-203, as enacted by Chapter 1, Laws of Utah 1987)

49-13-202, (Renumbered from 49-3-204, as last amended by Chapter 220, Laws of Utah

2000)

49-13-203, (Renumbered from 49-3-206, as last amended by Chapter 141, Laws of Utah

2001)

49-13-204, (Renumbered from 49-3-207, as enacted by Chapter 1, Laws of Utah 1987)

49-13-205, (Renumbered from 49-3-205, as last amended by Chapter 46, Laws of Utah

1995)

49-13-301, (Renumbered from 49-3-301, as last amended by Chapter 157, Laws of Utah

1992)

49-13-303, (Renumbered from 49-3-302, as last amended by Chapter 157, Laws of Utah

1992)

49-13-401, (Renumbered from 49-3-401, as last amended by Chapter 292, Laws of Utah

1999)

49-13-402, (Renumbered from 49-3-402, as last amended by Chapter 231, Laws of Utah

1996)

49-13-403, (Renumbered from 49-3-404, as enacted by Chapter 1, Laws of Utah 1987)

49-13-404, (Renumbered from 49-3-405, as last amended by Chapter 197, Laws of Utah

1995)

49-13-405, (Renumbered from 49-3-406, as last amended by Chapter 267, Laws of Utah 1998)
49-13-406, (Renumbered from 49-3-409, as enacted by Chapter 1, Laws of Utah 1987)
49-13-407, (Renumbered from 49-3-601, as enacted by Chapter 1, Laws of Utah 1987)
49-13-408, (Renumbered from 49-3-410, as last amended by Chapter 141, Laws of Utah 2001)
49-13-501, (Renumbered from 49-3-701, as last amended by Chapters 12 and 90, Laws of Utah 1994)
49-13-701, (Renumbered from 49-3-802, as last amended by Chapter 226, Laws of Utah 1993)
49-14-101, (Renumbered from 49-4-101, as enacted by Chapter 1, Laws of Utah 1987)
49-14-102, (Renumbered from 49-4-103, as last amended by Chapter 92, Laws of Utah 1999)
49-14-103, (Renumbered from 49-4-201, as enacted by Chapter 1, Laws of Utah 1987)
49-14-104, (Renumbered from 49-4-202, as enacted by Chapter 1, Laws of Utah 1987)
49-14-201, (Renumbered from 49-4-203, as last amended by Chapter 92, Laws of Utah 1999)
49-14-202, (Renumbered from 49-4-204, as enacted by Chapter 1, Laws of Utah 1987)
49-14-203, (Renumbered from 49-4-205, as last amended by Chapter 110, Laws of Utah 2001)
49-14-301, (Renumbered from 49-4-301, as last amended by Chapter 169, Laws of Utah 1996)
49-14-401, (Renumbered from 49-4-401, as last amended by Chapter 292, Laws of Utah 1999)
49-14-402, (Renumbered from 49-4-402, as enacted by Chapter 1, Laws of Utah 1987)
49-14-403, (Renumbered from 49-4-601, as last amended by Chapter 31, Laws of Utah 1997)
49-14-501, (Renumbered from 49-4-701, as last amended by Chapter 285, Laws of Utah

1990)

49-14-502, (Renumbered from 49-4-702, as enacted by Chapter 1, Laws of Utah 1987)

49-14-503, (Renumbered from 49-4-703, as last amended by Chapter 292, Laws of Utah

1999)

49-14-504, (Renumbered from 49-4-704, as last amended by Chapter 141, Laws of Utah

2001)

49-15-101, (Renumbered from 49-4a-101, as enacted by Chapter 260, Laws of Utah 1989)

49-15-102, (Renumbered from 49-4a-103, as last amended by Chapter 92, Laws of Utah

1999)

49-15-103, (Renumbered from 49-4a-201, as enacted by Chapter 260, Laws of Utah 1989)

49-15-104, (Renumbered from 49-4a-202, as enacted by Chapter 260, Laws of Utah 1989)

49-15-201, (Renumbered from 49-4a-203, as last amended by Chapter 92, Laws of Utah

1999)

49-15-202, (Renumbered from 49-4a-204, as enacted by Chapter 260, Laws of Utah 1989)

49-15-203, (Renumbered from 49-4a-206, as last amended by Chapter 305, Laws of Utah

1999)

49-15-204, (Renumbered from 49-4a-205, as last amended by Chapter 268, Laws of Utah

1998)

49-15-301, (Renumbered from 49-4a-301, as last amended by Chapter 157, Laws of Utah

1992)

49-15-401, (Renumbered from 49-4a-401, as last amended by Chapter 292, Laws of Utah

1999)

49-15-402, (Renumbered from 49-4a-402, as last amended by Chapter 273, Laws of Utah

1990)

49-15-403, (Renumbered from 49-4a-601, as enacted by Chapter 260, Laws of Utah 1989)

49-15-501, (Renumbered from 49-4a-701, as last amended by Chapter 366, Laws of Utah

1998)

49-15-502, (Renumbered from 49-4a-702, as enacted by Chapter 260, Laws of Utah 1989)

49-15-503, (Renumbered from 49-4a-703, as last amended by Chapter 292, Laws of Utah 1999)

49-15-504, (Renumbered from 49-4a-704, as last amended by Chapter 141, Laws of Utah 2001)

49-16-101, (Renumbered from 49-5-101, as enacted by Chapter 1, Laws of Utah 1987)

49-16-102, (Renumbered from 49-5-103, as last amended by Chapter 73, Laws of Utah 2001)

49-16-103, (Renumbered from 49-5-201, as enacted by Chapter 1, Laws of Utah 1987)

49-16-104, (Renumbered from 49-5-202, as enacted by Chapter 1, Laws of Utah 1987)

49-16-201, (Renumbered from 49-5-203, as last amended by Chapter 283, Laws of Utah 2000)

49-16-202, (Renumbered from 49-5-204, as enacted by Chapter 1, Laws of Utah 1987)

49-16-301, (Renumbered from 49-5-301, as last amended by Chapters 131 and 292, Laws of Utah 1999)

49-16-401, (Renumbered from 49-5-401, as last amended by Chapter 292, Laws of Utah 1999)

49-16-402, (Renumbered from 49-5-402, as last amended by Chapter 51, Laws of Utah 1990)

49-16-403, (Renumbered from 49-5-601, as last amended by Chapter 31, Laws of Utah 1997)

49-16-501, (Renumbered from 49-5-701, as last amended by Chapter 293, Laws of Utah 1999)

49-16-502, (Renumbered from 49-5-702, as last amended by Chapter 267, Laws of Utah 1998)

49-16-503, (Renumbered from 49-5-703, as last amended by Chapter 90, Laws of Utah 1994)

49-16-504, (Renumbered from 49-5-704, as last amended by Chapter 141, Laws of Utah 2001)

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- 49-16-601**, (Renumbered from 49-5-501, as last amended by Chapter 283, Laws of Utah 2000)
- 49-16-602**, (Renumbered from 49-5-502, as last amended by Chapter 141, Laws of Utah 2001)
- 49-16-603**, (Renumbered from 49-5-503, as enacted by Chapter 1, Laws of Utah 1987)
- 49-16-701**, (Renumbered from 49-5-802, as enacted by Chapter 1, Laws of Utah 1987)
- 49-17-101**, (Renumbered from 49-6-101, as enacted by Chapter 1, Laws of Utah 1987)
- 49-17-102**, (Renumbered from 49-6-103, as last amended by Chapter 31, Laws of Utah 1997)
- 49-17-103**, (Renumbered from 49-6-201, as last amended by Chapter 198, Laws of Utah 1996)
- 49-17-104**, (Renumbered from 49-6-202, as enacted by Chapter 1, Laws of Utah 1987)
- 49-17-201**, (Renumbered from 49-6-203, as last amended by Chapter 198, Laws of Utah 1996)
- 49-17-301**, (Renumbered from 49-6-301, as last amended by Chapter 198, Laws of Utah 1996)
- 49-17-401**, (Renumbered from 49-6-401, as last amended by Chapter 292, Laws of Utah 1999)
- 49-17-402**, (Renumbered from 49-6-402, as last amended by Chapter 75, Laws of Utah 1990)
- 49-17-404**, (Renumbered from 49-6-404, as last amended by Chapter 7, Laws of Utah 1991, Second Special Session)
- 49-17-405**, (Renumbered from 49-6-601, as enacted by Chapter 1, Laws of Utah 1987)
- 49-17-501**, (Renumbered from 49-6-701, as last amended by Chapter 285, Laws of Utah 1990)
- 49-17-502**, (Renumbered from 49-6-702, as enacted by Chapters 1 and 168, Laws of Utah 1987)
- 49-17-701**, (Renumbered from 49-6-801, as enacted by Chapter 84, Laws of Utah 1996)

49-18-101, (Renumbered from 49-6a-101, as enacted by Chapter 356, Laws of Utah 1997)
49-18-102, (Renumbered from 49-6a-103, as enacted by Chapter 356, Laws of Utah 1997)
49-18-103, (Renumbered from 49-6a-201, as enacted by Chapter 356, Laws of Utah 1997)
49-18-104, (Renumbered from 49-6a-202, as enacted by Chapter 356, Laws of Utah 1997)
49-18-201, (Renumbered from 49-6a-203, as enacted by Chapter 356, Laws of Utah 1997)
49-18-301, (Renumbered from 49-6a-301, as enacted by Chapter 356, Laws of Utah 1997)
49-18-401, (Renumbered from 49-6a-401, as last amended by Chapter 292, Laws of Utah 1999)
49-18-402, (Renumbered from 49-6a-402, as enacted by Chapter 356, Laws of Utah 1997)
49-18-403, (Renumbered from 49-6a-501, as enacted by Chapter 356, Laws of Utah 1997)
49-18-501, (Renumbered from 49-6a-601, as enacted by Chapter 356, Laws of Utah 1997)
49-18-502, (Renumbered from 49-6a-602, as enacted by Chapter 356, Laws of Utah 1997)
49-18-701, (Renumbered from 49-6a-701, as enacted by Chapter 267, Laws of Utah 1998)
49-19-101, (Renumbered from 49-7-101, as enacted by Chapter 1, Laws of Utah 1987)
49-19-103, (Renumbered from 49-7-201, as enacted by Chapter 1, Laws of Utah 1987)
49-19-104, (Renumbered from 49-7-202, as enacted by Chapter 1, Laws of Utah 1987)
49-19-201, (Renumbered from 49-7-203, as last amended by Chapter 197, Laws of Utah 1995)
49-19-301, (Renumbered from 49-7-301, as enacted by Chapter 1, Laws of Utah 1987)
49-19-401, (Renumbered from 49-7-401, as last amended by Chapter 292, Laws of Utah 1999)
49-19-501, (Renumbered from 49-7-403, as last amended by Chapter 197, Laws of Utah 1995)
49-20-101, (Renumbered from 49-8-101, as enacted by Chapter 1, Laws of Utah 1987)
49-20-102, (Renumbered from 49-8-103, as last amended by Chapter 292, Laws of Utah 1999)
49-20-103, (Renumbered from 49-8-201, as enacted by Chapter 1, Laws of Utah 1987)
49-20-104, (Renumbered from 49-8-202, as enacted by Chapter 1, Laws of Utah 1987)

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49-20-105, (Renumbered from 49-8-102, as last amended by Chapter 292, Laws of Utah 1999)

49-20-201, (Renumbered from 49-8-203, as last amended by Chapter 360, Laws of Utah 1998)

49-20-202, (Renumbered from 49-8-204, as last amended by Chapter 360, Laws of Utah 1998)

49-20-301, (Renumbered from 49-8-301, as enacted by Chapter 1, Laws of Utah 1987)

49-20-401, (Renumbered from 49-8-401, as last amended by Chapter 360, Laws of Utah 1998)

49-20-402, (Renumbered from 49-8-402, as enacted by Chapter 1, Laws of Utah 1987)

49-20-404, (Renumbered from 49-8-403, as last amended by Chapter 292, Laws of Utah 1999)

49-20-405, (Renumbered from 49-8-404, as last amended by Chapter 283, Laws of Utah 2000)

49-20-406, (Renumbered from 49-8-405, as last amended by Chapter 154, Laws of Utah 2000)

49-21-101, (Renumbered from 49-9-101, as enacted by Chapter 1, Laws of Utah 1987)

49-21-102, (Renumbered from 49-9-103, as last amended by Chapter 283, Laws of Utah 2000)

49-21-103, (Renumbered from 49-9-201, as last amended by Chapter 169, Laws of Utah 1988)

49-21-104, (Renumbered from 49-9-202, as enacted by Chapter 1, Laws of Utah 1987)

49-21-105, (Renumbered from 49-9-102, as last amended by Chapter 111, Laws of Utah 1987)

49-21-201, (Renumbered from 49-9-203, as last amended by Chapter 157, Laws of Utah 1992)

49-21-301, (Renumbered from 49-9-301, as last amended by Chapter 90, Laws of Utah 1994)

49-21-401, (Renumbered from 49-9-401, as last amended by Chapter 292, Laws of Utah 1999)

49-21-402, (Renumbered from 49-9-402, as last amended by Chapter 231, Laws of Utah 1996)

49-21-403, (Renumbered from 49-9-403, as last amended by Chapter 292, Laws of Utah 1999)

49-21-404, (Renumbered from 49-9-404, as enacted by Chapter 1, Laws of Utah 1987)

49-21-405, (Renumbered from 49-9-405, as last amended by Chapter 81, Laws of Utah 1989)

49-21-406, (Renumbered from 49-9-407, as enacted by Chapter 1, Laws of Utah 1987)

49-21-407, (Renumbered from 49-9-409, as last amended by Chapter 231, Laws of Utah 1996)

REPEALS:

49-1-501, as enacted by Chapter 1, Laws of Utah 1987

49-1-605, as enacted by Chapter 1, Laws of Utah 1987

49-1-612, as enacted by Chapter 273, Laws of Utah 1990

49-1-617, as last amended by Chapter 332, Laws of Utah 2001

49-2-102, as enacted by Chapter 1, Laws of Utah 1987

49-2-403, as last amended by Chapter 90, Laws of Utah 1994

49-2-501, as enacted by Chapter 1, Laws of Utah 1987

49-2-702, as enacted by Chapter 1, Laws of Utah 1987

49-3-102, as enacted by Chapter 1, Laws of Utah 1987

49-3-403, as last amended by Chapter 90, Laws of Utah 1994

49-3-501, as enacted by Chapter 1, Laws of Utah 1987

49-3-702, as enacted by Chapter 1, Laws of Utah 1987

49-4-102, as enacted by Chapter 1, Laws of Utah 1987

49-4-403, as enacted by Chapter 1, Laws of Utah 1987

49-4a-102, as enacted by Chapter 260, Laws of Utah 1989

49-4a-403, as enacted by Chapter 260, Laws of Utah 1989
49-5-102, as enacted by Chapter 1, Laws of Utah 1987
49-5-403, as enacted by Chapter 1, Laws of Utah 1987
49-5-602, as last amended by Chapter 285, Laws of Utah 1990
49-6-102, as enacted by Chapter 1, Laws of Utah 1987
49-6-602, as last amended by Chapter 75, Laws of Utah 1990
49-6a-102, as enacted by Chapter 356, Laws of Utah 1997
49-7-102, as enacted by Chapter 1, Laws of Utah 1987
49-7-402, as enacted by Chapter 1, Laws of Utah 1987
49-7-404, as last amended by Chapter 88, Laws of Utah 2000
49-9-302, as enacted by Chapter 132, Laws of Utah 1987
49-9-406, as last amended by Chapter 267, Laws of Utah 1998
49-9-408, as last amended by Chapter 111, Laws of Utah 1987
49-10-303, as enacted by Chapter 151, Laws of Utah 1995

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 31A-22-703 is amended to read:

31A-22-703. Conversion rights on termination of group accident and health insurance coverage.

(1) Except as provided in Subsections (2) through (5), all policies of accident and health insurance offered on a group basis under this title or Title 49, Chapter [8] 20, [~~Group~~] Public Employees' Insurance Program Act, shall provide that a person whose insurance under the group policy has been terminated for any reason, and who has been continuously insured under the group policy or its predecessor for at least six months immediately prior to termination, is entitled to choose a converted individual policy of accident and health insurance from the insurer which conforms to Section 31A-22-708 or an extension of benefits under the group policy as provided in Section 31A-22-714.

(2) Subsection (1) does not apply if the policy:

(a) provides catastrophic, aggregate stop loss, or specific stop loss benefits;

~~[49-3-202].~~ **49-13-104. Creation of trust fund.**

(1) There is created the "Public Employees' Noncontributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

(2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by ~~[Title 49,]~~ Chapter ~~[+]~~ 11, Utah State Retirement Systems Administration.

Section 72. Section **49-13-201**, which is renumbered from Section 49-3-203 is renumbered and amended to read:

Part 2. Membership Eligibility

~~[49-3-203].~~ **49-13-201. System membership -- Eligibility.**

(1) Beginning July 1, 1986, the state and its educational institutions shall participate in this system.

~~[(1) Any]~~ (a) A person entering regular full-time employment with the state or its educational institutions after [the effective date of this chapter shall automatically become a member of the noncontributory retirement] July 1, 1986, is eligible for service credit in this system.

~~[(2) Any person in]~~ (b) A regular full-time [employment with] employee of the state or its educational institutions prior to [the effective date of this system] July 1, 1986, may either become [a member of this noncontributory] eligible for service credit in this system or remain [a member of the Public Employees' Retirement System] eligible for service in the system established under [Title 49,] Chapter [2,] 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board [pursuant to] in accordance with this chapter.

~~[(3) Membership in the noncontributory system is optional for political subdivisions,]~~

(2) An employer, other than the state and its educational institutions, may participate in this system except that once [a political subdivision] an employer elects to participate in [the noncontributory] this system, that election is [final and binding upon the political subdivision] irrevocable. [Persons]

(a) A person entering regular full-time employment with ~~[political subdivisions]~~ a participating employer which ~~[elect]~~ elects to participate in ~~[the noncontributory]~~ this system ~~[after the effective date of this chapter shall automatically become members of the noncontributory retirement]~~ is eligible for service credit in this system. ~~[Any]~~

(b) A person in regular full-time employment with ~~[the political subdivision]~~ a participating employer prior to ~~[that]~~ the participating employer's election to participate in this system may either become ~~[a member of the noncontributory retirement]~~ eligible for service credit in this system or remain ~~[a member of the Public Employees' Retirement System]~~ eligible for service in the system established under ~~[Title 49;]~~ Chapter ~~[2;]~~ 12. Public Employees' Contributory Retirement Act, by following the procedures established by the board ~~[pursuant to]~~ in accordance with this chapter.

Section 73. Section ~~49-13-202~~, which is renumbered from Section 49-3-204 is renumbered and amended to read:

~~[49-3-204].~~ **49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Nondiscrimination requirements.**

(1) (a) ~~[All political subdivisions of the state, unless]~~ Unless excluded under Subsection (2), ~~[are]~~ an employer is a participating ~~[employers in the system]~~ employer and may not withdraw from participation in ~~[the]~~ this system. ~~[All departments and educational institutions are also participating employers in the system and may not withdraw from participation in the system. As participating employers, political subdivisions, departments, and educational institutions shall meet all requirements for full participation in the system.]~~

(b) In addition to their participation in this system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

(2) ~~[Any political subdivision]~~ An employer not initially admitted or included as a participating employer in ~~[the]~~ this system prior to January 1, 1982, may be excluded from participation in ~~[the]~~ this system if the ~~[political subdivision]~~ employer elects not to provide or participate in any type of private or public retirement, supplemental or ~~[deferred income program]~~ defined contribution plan, either directly or indirectly, for its employees, except for Social Security.

[Any excluded political subdivision]

(3) If an employer elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for social security, the employer shall be a participating employer in this system.

(4) (a) Any employer may by resolution of its governing body apply for [and receive] admission to [the] this system. [Once admitted, the political subdivision may not withdraw from participation and shall meet all requirements for full participation in the system. If an excluded political subdivision elects at any time to provide or participate in any type of public or private retirement, supplemental or deferred income program, either directly or indirectly, except for social security, the political subdivision shall be required to be a participating employer in the system. As a participating employer, the political subdivision may not withdraw from participation and shall meet all requirements for full participation in the system.]

[(3) (a) Any organization or agency supported in whole or in part by state public funds, which prior to application is not covered by this chapter, may by resolution of its governing body apply for admission to the system. The board may refuse admission to any organization or agency applying for admission upon a finding that it is not in the best interest of the participating employers and employees.]

(b) Upon approval of the board, the [organization or agency shall become a participant in the system if the board and the organization or agency agree upon:] employer is a participating employer in this system and is subject to this title.

[(i) the terms by which its employees shall become members of the system, such as the effective date of coverage;]

[(ii) the amount of prior service credit with which they may be credited, if any;]

[(iii) the amount of any contributions in addition to regular contributions that will be required to provide any prior service credits or retroactive current service credits from either the employing unit or its employees; and]

[(iv) the manner in which retroactive current or prior service credits may be established, if any;]

~~[(c) Once admitted to the system, an organization or agency may not withdraw from participation, except as provided in Subsection (4), and shall meet all requirements for full participation in the system.]~~

~~[(d) An organization or agency supported in whole or in part by public funds may not apply for or receive admission to the system after July 1, 1991.]~~

~~[(4) (a) An organization or agency admitted to the system pursuant to Subsection (3) which no longer receives public funds may withdraw from the system if:]~~

~~[(i) the organization or agency's governing body by resolution petitions the board for withdrawal from the system; and]~~

~~[(ii) the board approves the withdrawal:]~~

~~[(b) Once approval to withdraw is granted, the organization or agency and its employees shall be governed by Sections 49-1-502 and 49-1-503.]~~

~~[(5) Except as provided in Sections 49-3-206 and 49-3-207, no participating employer may maintain full participation in the system by covering only part of its employees. The full participation requirement is satisfied if a participating employer covers those of its employees eligible for coverage under:]~~

~~[(a) Title 49, Chapter 4, Public Safety Retirement Act; or]~~

~~[(b) Title 49, Chapter 5, Firefighters' Retirement Act and its remaining employees under either Title 49, Chapter 2, Public Employees' Retirement Act or Title 49, Chapter 3, Public Employees' Noncontributory Retirement Act, whichever is applicable.]~~

~~[(6) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or deferred income program, either directly or indirectly, for their employees:]~~

~~[(7) (a) Credit unions or private hospitals which are participating units in any system administered by the board may withdraw from participation upon applying to the board. This application shall be made between July 1, 2000, and December 31, 2000. The withdrawal is effective the day after the last day the withdrawing unit pays retirement contributions on its employees' salaries:]~~

~~[(b) Once the withdrawal of the credit union or private hospital is complete, the employees of the withdrawing unit may apply to withdraw their vested contributions. Refunds shall then be paid in accordance with Subsection 49-1-502(3).]~~

~~[(c) Under no circumstance may a withdrawing unit receive the employer contributions which have been made to the system.]~~

(5) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.

Section 74. Section **49-13-203**, which is renumbered from Section 49-3-206 is renumbered and amended to read:

~~[49-3-206].~~ **49-13-203. Exclusions from membership in system.**

(1) The following employees are [excluded from membership in the retirement] not eligible for service credit in this system:

[(+)] (a) [Every] An employee whose employment status is temporary in nature due to the nature or the type of work to be performed[-], provided that:

(i) if the term of employment exceeds six months[-, then for that employee a regular full-time status shall be assumed, and the employee shall be enrolled in the system] and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment[-]; and

(ii) if [the same] an employee, previously terminated prior to [enrollment as a member, is again employed] becoming eligible for service credit in this system, is reemployed within three months of termination by the same participating employer, the [employee shall be immediately enrolled as a member if the work constitutes full-time as defined in this chapter] participating employer shall report and certify to the office and the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credit in this system.